STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 14-10-003:

This is the proposed decision of Administrative Law Judge Hymes. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's April 27, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE
Michelle Cooke
Acting Chief Administrative Law Judge

MLC:mph
Attachment

Decision **PROPOSED DECISION OF ALJ HYMES** **(Mailed 3/23/2023)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Create a Consistent Regulatory Framework for the Guidance, Planning and Evaluation of Integrated Distributed Energy Resources.	Rulemaking 14-10-003

DECISION DISMISSING PETITION FOR MODIFICATION OF DECISION 22-05-002

Summary

This decision denies the *Petition of the Solar Energy Industries Association and the California Solar & Storage Association to Modify Decision 22-05-022*. The Commission continues to support the policy determination in Decision (D.) 22-05-022 to revise the "No New DER" scenario to exclude both load reducing and load inducing distributed energy resources from the load forecast in this scenario. The Commission agrees with petitioners that a zero value for the Greenhouse Gas Adder was not anticipated. As shown through Commission adoption of Resolution E-5228 that approved the 2022 Avoided Cost Calculator values, however, the Commission considers Energy Division's solution to resolving the zero value to be a reasonable approach. This decision determines that the Petitioners brought no facts to this proceeding that have not already been addressed either in this proceeding or in the resolution process approving Resolution E-5228. Rulemaking 14-10-003 is closed.

1. Background

The following subsections present a description of relevant information from Decision (D.) 22-05-022, a procedural history related to the instant petition, and a brief synopsis of the petition and party positions.

1.1. Relevant Information from D.22-05-002

Following the 2022 biennial review of the Avoided Cost Calculator, [1] the Commission adopted Decision (D.) 22-05-002, which approved several policies related to the Avoided Cost Calculator and updated the Avoided Cost Calculator in several ways. Most relevant to this decision, D.22-05-002 modified the "No New DER[2]" scenario.

The Commission describes the "No New DER" scenario as a counterfactual load forecast that includes no new distributed energy resources installed after 2018. It represents what the forecasted load would be if no new distributed energy resources were to be installed.[3] Prior to the adoption of D.22-05-002, this would result in removing load reducing distributed energy resources from the forecasted load including energy efficiency, demand response, behind-the-meter solar, and behind-the-meter storage.

In D.22-05-002, the Commission revised the "No New DER" scenario to account for all distributed energy resources, both load reducing and load

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[1] The Commission uses the Avoided Cost Calculator to determine the primary benefits of distributed energy resources across Commission proceedings, the primary benefits being the avoided costs related to the provision of electric and natural gas service. The Avoided Cost Calculator calculates seven types of avoided costs: generation capacity, energy, transmission and distribution capacity, ancillary services, Renewables Portfolio Standard, greenhouse gas emissions, and high global warming potential gases. The outputs of the Avoided Cost Calculator feed into the cost-benefit analysis for distributed energy resources. *See* D.22-05-022 at 3-5.

[2] DER is the acronym for distributed energy resources.

[3] Petition at 2, citing Resolution E-5077 at 5.

increasing. In its *Integrated Distributed Energy Resources (IDER) 2022 Update Avoided Cost Calculator Staff Proposal* (Staff Proposal), Energy Division asserted that this revision to the scenario is necessary to properly value the avoided costs of all distributed energy resources.[4] The record of the proceeding includes references to Public Utilities Code Section 769(a) and Federal Energy Regulatory Commission (FERC) Order 2222, 86 FR 16511, both of which define distributed energy resources as including electric vehicles.[5] As a result of D.22-05-002, transportation and building electrification load were added to the list of distributed energy resources removed from the base case to create the load forecast for the revised "No New DER" scenario.

1.2. Procedural History

On October 3, 2022, California Solar & Storage Association (CALSSA) and Solar Energy Industry Association (SEIA) (jointly, Petitioners) filed a Petition to Modify D.22-05-002 (Petition). Petitioners request the Commission to negate the change made in 2022 to the "No New DER" scenario that eliminated load increasing distributed energy resources from the forecasted load and return to the prior version of the scenario that only removed load reducing distributed energy resources from the forecasted load. Petitioners assert the 2022 change results in an Avoided Cost Calculator that undervalues all distributed energy resources. Petitioners contend that the impact of the 2022 change to the "No New DER" scenario on Avoided Cost Calculator values and the approach to

[4] Staff Proposal at 28-29.

[5] D.22-05-002 at 41, footnote 63.

counteract the impact were learned after the revised "No New DER" scenario was run through the RESOLVE[6] model.

On November 2, 2022, 350 Bay Area and Clean Coalition filed responses supporting the Petition and Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company (Utilities) filed a joint response (Utilities' Response) opposing the Petition. With permission of the Administrative Law Judge, Petitioners filed a reply to the Utilities' Response on November 14, 2022 (Petitioners' Reply).

1.3. Petition and Party Positions

The subsections below present an overview of the Petition and party positions.

1.3.1. Petitioners' and Supporters' Arguments

Petitioners request the Commission to revert the "No New DER" scenario back to eliminate only load-reducing distributed energy resources from the load forecast. Petitioners conclude that eliminating load increasing distributed energy resources in the "No New DER" scenario in the Avoided Cost Calculator produces Avoided Cost Calculator results that undervalue greenhouse gas

[6] As part of the Integrated Resources Planning (IRP) proceeding, the Commission adopts Reference System Portfolios and Preferred System Portfolios to meet the requirements of Senate Bill (SB) 350 and an electric sector greenhouse gas target. Load serving entities use the Reference System Portfolio to develop individual integrated resource plans. Based upon these plans, the Commission adopts a final portfolio, called the Preferred System Portfolio. The Reference System Portfolio and the Preferred System Portfolio rely upon two models: 1) the RESOLVE model, which is a capacity expansion model that identifies a least-cost portfolio of resources to meet the electricity sector greenhouse gas emission target and 2) SERVM, which provides production cost modeling of portfolios generated by RESOLVE. The SERVM is a probabilistic reliability planning model that evaluates the loss of load probability for portfolios of generation and transmission resources generated by RESOLVE. Both the Reference System Portfolio and the Preferred System Portfolio generate several scenarios, including the "No New DER" scenario. The "No New DER" scenario feeds into the Avoided Cost Calculator. (D.22-05-022 at 5-6.)

reductions from distributed energy resources, which is at odds with the objective to reduce emissions through electrification.[7] The Petition is supported by 350 Bay Area and Clean Coalition.

Petitioners contend that the "No New DER" scenario was (1) modeled assuming no change in greenhouse gas reductions expected from the electric sector, (2) wrongly omits the assumption that the electric sector must include electrification through distributed energy resources that will reduce emissions in other sectors, and (3) unrealistically assumes that required emission reductions in transportation and buildings will not happen through other means, at a cost not included in the electric sector.[8] As a result of these incorrect assumptions, Petitioners assert the Greenhouse Gas Adder for the 2022 Avoided Cost Calculator is substantially below that in the 2020 and 2021 Avoided Cost Calculator and the Greenhouse Gas Adder in the adopted Preferred System Portfolio, which results in a devaluation of the avoided costs of distributed energy resources.[9] Petitioners also assert this is based on a conflicting premise that the electric sector will no longer use load increasing distributed energy resources to reduce greenhouse gas emissions.[10]

Petitioners presented information they contend are facts supporting elimination of the revisions to the "No New DER" scenario. First, Petitioners state the record of the D.22-05-002 did not include a justification for adoption of the revised "No New DER" scenario, i.e., omission of load-increasing distributed

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[7] Petition at 2.

[8] Petition at 3-4.

[9] Petition at 4.

[10] Petition at

energy resources from the load forecast.[11] Second, Petitioners state the Commission did not perform a separate counter-factual to evaluate avoided costs from measures that increase load, despite CALSSA making such a recommendation.[12] Third, Petitioners state the Commission did not ensure the "No New DER" scenario modeling captures the marginal costs to replace the load increasing distributed energy resources, as recommended by SEIA, and, therefore, the "No New DER" scenario fails to meet this requirement because it assumes no change in the electric sector greenhouse gas emissions.[13] Lastly, Petitioners describe the analysis presented in the resolution adopting the final 2022 updated Avoided Cost Calculator, stating that the "No New DER" scenario results in lower loads that the Preferred System Portfolio and a Greenhouse Gas Adder of zero, when using 2030 as the anchor year, as directed by D.20-04-020.[14] Petitioners highlight that for the adopted Avoided Cost Calculator, Energy Division changed the anchor year to 2035 to rectify the zero value of the Greenhouse Gas Adder.[15]

Based upon this information, Petitioners present three arguments for reverting the "No New DER" scenario back to the 2020 version of the scenario.

First, Petitioners argue that use of the "No New DER" scenario negates the desired consistency between the Avoided Cost Calculator and the IRP.[16]

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[11] Petition at 6-7.

[12] Petition at 8. This section of the Petition is titled, *Facts Supporting Elimination of the Modifications to the "No New DER" Case*.

[13] Petition at 8.

[14] Petition at 10.

[15] Petition at 10-12.

[16] Petition at 12-14. (Pages 12 to 17 of the Petition is titled, "Argument" and contains three subsections.)

Petitioners state the greenhouse gas emission goals in the IRP are 38 million metric tons (MMT) in 2030 and 15 MMT in 2045. Petitioners contend that the revised "No New DER" scenario should have been also revised to assume emissions reductions have not occurred, but the scenario assumed the same emissions goals of 38 MMT in 2030 and 15 MMT in 2045.[17] Petitioners assert the revised "No New DER" scenario values distributed energy resources in a world where California will not be using the electric sector to reduce greenhouse gas emissions.

Second, Petitioners argue that use of the revised "No New DER" scenario undervalues distributed energy resources.[18] Petitioners contend the Commission previously stated in D.17-08-022 that the lack of an adequate Greenhouse Gas Adder would result in undervaluing energy efficiency and would have a negative impact. Petitioners assert that the revised "No New DER" scenario results in this same undervaluing.

Third, Petitioners argue that the action taken by Energy Division to use a different anchor year to determine the Greenhouse Gas Adder in its analysis in Resolution E-5228 is evidence that irregular results of the revised "No New DER" scenario were not contemplated by Energy Division, and therefore the Commission should modify D.22-05-022 and revert to the prior version of the "No New DER" scenario.[19] Petitioners allege that only by going beyond its authority and using a different anchor year to determine the Greenhouse Gas

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[17] Petition at 13.

[18] Petition at 14-15.

[19] Petition at 17.

Adder was Energy Division able to "mitigate the nonsensical results produced" by the revised "No New DER" scenario.[20]

1.3.2. Utilities' Position and Petitioners' Reply

Utilities oppose the Petition and request the Commission deny it as Utilities contend Petitioners do not present new or changed facts but, rather, relitigate their previous position. Utilities submit that the implementation of the revised "No New DER" scenario in the Avoided Cost Calculator "may make facts more apparent, but they do not constitute 'new' or 'changed' facts that warrant modification of a final Commission decision."[21] Utilities allege Petitioners have previously litigated this very issue.[22]

Continuing to support the "No New DER" scenario, as adopted, Utilities assert that the change in D.22-05-022 to omit load-increasing distributed energy resources from the load forecast in the "No New DER" scenario is a policy alignment with a practice previously adopted by the Commission. Pointing to Finding of Fact 34 in D.22-05-002, Utilities state that in the Energy Efficiency portfolio, the Commission made a policy decision to use the Avoided Cost Calculator to evaluate both load reducing and load increasing distributed energy resources.[23]

In reply to the response, Petitioners argue that the requested modification does not relitigate their positions. Petitioners contend that the new fact is that the

[20] Petition at 16

[21] Utilities Response at 3.

[22] Utilities Response at 3.

[23] Utilities' Response at 4 citing D.22-05-002 at Finding of Fact 34, which states: "It has been the unadopted practice of the Commission to use the Avoided Cost Calculator to determine the increased supply costs of the fuel substitution measures that are part of the energy efficiency portfolio."

revised "No New DER" scenario assumes that the necessary emission reductions in building and transportation are handled elsewhere and no longer the responsibility of the electric sector. Petitioners further state that they could not have argued this because the results of using the revised "No New DER" scenario were unknown. Petitioners submit that the modeling of the revised "No New DER" removed both load reducing and load increasing distributed energy resources from the load forecast but did not adjust the electric sector's greenhouse gas reduction goals. Petitioners state that "the modeling results show that the state's [greenhouse gas emission reduction] goals for 2030 and 2045 can be met with fewer new resources than in the [Preferred System Portfolio], and at lower costs."[24] Petitioners assert that the Commission adopted the revised "No New DER" scenario based on a "misconception that the modification to the "No New DER" scenario would not generate an [Avoided Cost Calculator] that is fundamentally at odds with California's plans to reduce [greenhouse gas] emissions through electrification of buildings and transportation."[25]

2. Issues Before the Commission

The Commission must determine whether the Petition is in compliance with Commission Rules of Practice and Procedure and, if it is, whether it should be granted.

3. Petition Brings Forth No New Information

As described below, this decision agrees with Utilities that Petitioners bring forth no new information that the Commission has not already considered. Therefore, Petition does not comply with the intent of Public Utilities Code Section 1708 and Rule 16.4. The Petition is denied.

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[24] Petitioners' Reply at 4.

[25] Petitioners' Reply at 4.

3.1. Standard of Review

Public Utilities (Pub. Util.) Code § 1708 authorizes the Commission to "rescind, alter, or amend any order or decision made by it." As described in Rule 16.4 of the Commission's Rules of Practice and Procedure (Rules), allegations of new or changed facts may be raised in a petition for modification if properly supported by the appropriate declaration or affidavit. A petition for modification must be filed within one year of the effective date of the decision proposed to be modified, and if past one year, the petition "must also explain why the petition could not have been presented within one year of the effective date of the decision." However, prior Commission decisions have made clear that a petition for modification is not an alternate means for re-litigation or for legal issues that may be raised in an Application for Rehearing.[26]

3.2. Alleged New Facts Have Been Previously Considered

Petitioners waver between the Petition and the Petitioners' Reply in what they perceive as new facts for the Commission to ponder. In the Petition, the following are presented as new facts: (1) no justification for adoption of the revised "No New DER" scenario;[27] (2) lack of a separate counter-factual to evaluate avoided costs from measures that increase load;[28] (3) absence of "No New DER" scenario modeling capturing the marginal costs to replace the load increasing distributed energy resources;[29] and (4) the "No New DER" scenario

[26] *See*, for example, D.11-10-034 at 4-5.

[27] Petition at 6-7.

[28] Petition at 8.

[29] Petition at 8.

results in: (a) lower loads than the Preferred System Portfolio and (b) a Greenhouse Gas Adder of zero.[30]

In Petitioners' Reply, Petitioners state the new fact is that the Avoided Cost Calculator values, based on the revised "No New DER" scenario, indicate the Commission adopted the changes to the "No New DER" scenario based on a "basic misconception that the modification to the "No New DER" scenario would not generate an Avoided Cost Calculator that is fundamentally at odds with California's plan to reduce [greenhouse gas] emissions through electrification of buildings and transportation, and thus undervalues the [greenhouse gas] reductions from [distributed energy resources]."[31] (This aligns with the fourth fact in the Petition.)

As stated in Utilities' Response, the Commission has stated that "[m]odifying an existing decision, however, is an extraordinary remedy that must be carefully applied to keep with the principles of res judicata since 'Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed.'"[32] As discussed below, upon review the Commission agrees with Utilities that the alleged new facts are facts the Commission has previously considered.

Regarding the statement that D.22-05-022 lacks sufficient justification for the revision to the "No New DER" scenario; the Commission disagrees. Moreover, this is not a statement of fact but rather an allegation of legal error

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[30] Petition at 10.

[31] Petition at 4-5.

[32] Utilities' Response at 2 citing D.19-10-002 at 3. *See* D.92058 at 24; see also D.15-05-004 at 7.

requiring an application for rehearing and, as noted by Utilities, the time for filing an application for rehearing has passed.[33]

With respect to a) the lack of a separate counter-factual to evaluate avoided costs of measures that increase load or b) the absence of "No New DER" scenario modeling capturing the marginal costs to replace the load increasing distributed energy resources, the Petitioners admitted these are not new facts. As described by Petitioners themselves, these recommendations were discussed in briefs and the Commission declined to adopt them.[34]

The final new fact offered by Petitioners, the "No New DER" scenario results in lower loads than the Preferred System Portfolio and a Greenhouse Gas Adder of zero, while a new fact for this proceeding, is not a new fact for parties or the Commission to consider. This information was conveyed through the resolution process for Resolution E-5228.

Petitioners describe that parties had an opportunity to informally comment on the results of the modeling that used the "No New DER" scenario. Petitioners underscore that the "anomaly of a zero [Greenhouse Gas] Adder in 2030 in the 2022 [Avoided Cost Calculator] 'No New DER' scenario resulted in Commission staff deviating from the Commission approved methodology for determination of the adder, and instead, utilizing the 2035 [Greenhouse Gas] shadow price from RESOLVE (rather than the 2030 shadow price) as the anchor value for the [Greenhouse Gas] adder in the 2022 [Avoided Cost Calculator]."[35] Informal comments, wherein Utilities questioned the use of 2035 as the anchor year for the electric sector Greenhouse Gas value, were discussed in the Petition

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[33] *See* Utilities' Response at 4.

[34] Petition at 8.

[35] Petition at 11.

and in Resolution E-5228.[36] Both E-5228 and the Petition describe Energy Division's reasoning for using the alternate anchor year:

> D.22-05-002 declined to update the methodology for determining the Greenhouse Gas value, which is described in D.20-04-010. While it is true that 2030 has been used in the past as the anchor year, D.20-04-010 states that "we direct staff to continue using the straight-line adder previously adopted by the commission but consider modifying the values based on post 2030 date. Accordingly, 2035 was chosen as the anchor year because the [Greenhouse Gas] values in 2030 (and 2032) are zero.[37]

Petitioners assert that Energy Division's use of the alternate anchor year "potentially exceeded its authority."[38] Petitioners conclude that this is evidence that the irregular results of the "No New DER" scenario (i.e., a Greenhouse Gas Adder value of zero) should cause the Commission to revert the revised "No New DER" scenario. The Commission disagrees and finds that by adopting the Resolution E-5228, the Commission supported the actions of Energy Division and solidified agency support for the revised "No New DER" scenario. Accordingly, this decision finds this is not a new fact for the Commission to consider.

Having determined the Petitioners presented no new facts for the Commission to consider, this decision concludes the Petition fails to meet the requirements of a Petition for Modification pursuant to Public Utilities Code Section 1708 and the Commission Rules of Practice and Procedure, Rule 16.4.

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[36] E-5228 at 8 and Petition at 11.

[37] E-5228 at 8 and Petition at 11-12.

[38] Petition at 15.

There being no further issues for the Commission to consider in this proceeding, this proceeding should be closed.

4. Comments on Proposed Decision

The proposed decision of Administrative Law Judge Kelly A. Hymes in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on __________, and reply comments were filed on _____________ by ________________.

5. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Kelly A. Hymes is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The alleged new fact that D.22-05-022 lacks sufficient justification for the revision to the "No New DER" scenario is not a statement of fact but rather an allegation of legal error requiring an application for rehearing, which is no longer applicable.

2. Petitioners admit that the alleged new facts—a lack of a separate counter-factual to evaluate avoided costs of measures that increase load or the absence of "No New DER" scenario modeling capturing the marginal costs to replace the load increasing distributed energy resources—are not new facts.

3. Informal comments, wherein Utilities questioned the use of the year 2035 as the anchor year for the electric sector Greenhouse Gas value, were discussed in the Petition and in Resolution E-5228.

4. By adopting Resolution E-5228, the Commission supported the actions of Energy Division to use a different anchor year for the electric sector Greenhouse

Gas value and solidified Commission support for the revised "No New DER" scenario.

5. Use of a different anchor year for the electric sector Greenhouse Gas value is a fact the Commission has already considered.

6. Petitioners present no new facts the Commission has not already considered.

Conclusions of Law

1. The Petition fails to meet the requirements of a Petition for Modification pursuant to Public Utilities Code Section 1708 and the Commission Rules of Practice and Procedure, Rule 16.4.
2. The Petition should be denied.
3. Rulemaking 14-10-003 should be closed.

O R D E R

IT IS ORDERED that:

1. The *Petition of the Solar Energy Industries Association and the California Solar & Storage Association to Modify Decision 22-05-022* is denied.
2. Rulemaking 14-10-003 is closed.

This order is effective today.

Dated ____________________________, at San Francisco, California.